

***United States Court of Appeals
for the Second Circuit***



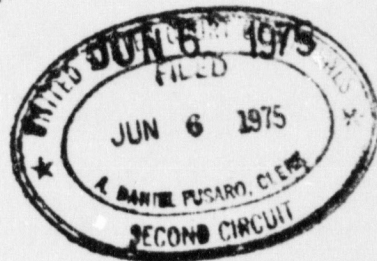
**APPELLANT'S
BRIEF**

75-7315

United States Court of Appeals
Second Circuit

75-7315

On the Matter of the Application of
Donald T. Horn



For a Writ of Habeas Corpus to
Determine Custody of Rosemary F. Horn,
a child now held by Genevieve Keller

B

To the United States Court of Appeals
Second Circuit

1. The Petitioner, Donald T. Horn, in the above
Petition requested the United States District Court
to make an absolute award of custody of
Rosemary F. Horn, his daughter, in accordance
with the amended Separation Contract. The same
Petitioner requested the Court to vacate the award
of custody granted by the Florida Circuit Court
and for the U.S. Court to assume jurisdiction.

2. The Petitioner, Donald T. Horn believes that

2. The Petitioner, Donald T. Horn, believes that the U. S. District Court, Eastern District, acted incorrectly in refusing to assume jurisdiction of the case, and failing to order my minor child Rosemary Frances Horn returned to me.

3. The Petitioner feels that the cited ^{Case} Barnes vs. US 556 (1890), by the U. S. District Court in the plea for denying the request is not applicable to this matter since there was no other Court involved previous to the United States



Court. Circumstances in this case, and the principles involved are entirely different.

4. On the present case there is a New York State judgment, a New York State Separation Agreement Contract, and a Mexican Divorce all of which award custody of Rosemary Horn to the Petitioner. The New York State Separation Agreement Contract survives the Mexican Divorce decree. The United States Constitution requires that full faith and credit be given to acts of one State in other States. This was not done by the Florida Circuit Court, and the Florida Circuit Court acted in error in this regard.

5. The Bureau Case presents no precedent or basis for denial in this matter since the full faith and credit principle guaranteed by the U.S. Constitution is not present, and no State Court action or contract was involved.

6. Conversely, precedent does exist for the U.S. Court to assume jurisdiction in cases of this nature. See Nick F. De Martino & Jean De Martino v. Olga Scarpitta and the Spence Chapin Adoption Service.

U.S. District Court, Southern District of
New York 71 Civ 1596

and
U.S. Court of Appeals, Second Circuit
71-1427

7 In addition, under the principle of comity the award of custody by the Republic of Mexico should also be recognized.

8. Further, violation of the separation agreement by my ex wife Genevieve Keller has resulted in expenses to me approximating \$15,000, well over the statutory amount of \$10,000, which places jurisdiction in United States Courts. Attached herewith as Appendix C is a detailed listing of expenses which total \$12,526.97 of the overall total.

9 Since my residence is in New York, the United States Court, Eastern District of New York has jurisdiction based on diversity of citizenship.

10. Attached herewith is the Petition, Index No 74C 1355 requesting the U. S. Court to assume jurisdiction over the matter, and the order signed by the Honorable Edwin J. Judd, United States District Judge granting this, and issuing a show cause order. This is Appendix B.

11 The Petitioner requests that the United States Court of Appeals, Second Circuit, assume jurisdiction in this case and order my minor daughter Rosemary Frances Horn returned home to me forthwith.

12. She is enrolled in Sacred Heart Academy, Hempstead, New York, her own school which she has attended since the First Grade. Her home, friends, and roots are here, and her father the Petitioner is dedicated to the best interests and welfare of her. He has raised Rosemary T. Horn, and her three older sisters alone since their mother left five years ago.

13. In view of the fact that three times the Respondent, Genevieve Keller, ignored the Order of United States District Judge Irving Judd and refused to appear, the Petitioner respectfully requests the Court to order Rosemary returned to her rightful legal custodian, i.e., the Petitioner, Donald T. Horn, and that the U. S. Marshall be directed to render any such assistance as may be required to carry out this Order.

H

14. The Petitioner further respectfully requests this Court to direct the Circuit Court for the 17th Judicial District in and for Broward County, Florida, to relinquish jurisdiction over the parties and Rosemary F. Horn, subject of this Order.

Rockville Centre, New York
June 5th, 1975
Chas. A. Supple

Donald T. Horn
PRO SE
172 Fonda Road
Rockville Centre, New York
516-536-8757
No. 24-1-100-100
Commission Expires March 20, 1977
- 4 - A

To: John G. Ferris, Circuit Judge
Circuit Court of the Seventeenth
Judicial Circuit
Broward County, Florida

To: Genevieve Keller
347 Morum Way
Yacht Haven
Fort Lauderdale, Florida
33312

List of Appendices

- (A) Memorandum Order of Honorable Mark A. Costantino, U. S. D. J. dated April 22, 1975
- (B) Petition of Donald T. Horn for Writ of Habeas Corpus dated August 30, 1974, together with United States District Court, Eastern District of New York Order to Show Cause of Honorable Orrin J. Judd, U. S. D. C. dated September 20, 1975, Order No 74 C 1355.
- (C) Statement of Expenses
- (D) Supreme Court of the State of New York, Special Term Part II, County of Nassau, Order dated December 7, 1965, Honorable Major Pictone, J.S.C.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

On the Matter of the Application
of DONALD V. HORN

74-C-1836

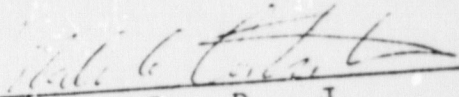
for a writ of habeas corpus to
determine custody of ROSEMARY HORN,
a child now held by GENEVIEVE KELLER

Krakower, Samanowitz & Goldman, 11 West 42nd Street,
New York City 10036, for Donald V. Horn

COSTANTINO, D.J.

This is an application for a writ of habeas corpus seeking release of petitioner's child from his ex-wife's custody. This court can certainly appreciate the anguish felt by petitioner. In a letter to Chief Judge Jacob Mishler dated January, 1975, petitioner declares: "I am putting everything I represent, my life, existence, my job, on the line in this effort." Federal courts have, however, limited jurisdiction. Under the division of labor which our dual system of state and federal courts establishes, certain powers are exclusively within the province of state courts. It is a long-standing principle that a United States District Court, or a judge thereof, has no jurisdiction to issue a writ of habeas corpus to recover the

custody of a child withheld from its parent, In re Burrus,
136 U.S. 586 (1890). Accordingly, this application must
be denied.


U. S. D. J.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

APR 28 1975

-----x
On the Matter of the Application
of DONALD V. HORN

JUDGMENT

for a writ of habeas corpus to
determine custody of ROSEMARY HORN,
a child now held by GENEVIEVE KELLER

74-C-1836

-----x
M'FILED

A memorandum order of the Honorable Mark A.
Costantino, United States District Judge, having been filed on
April 24, 1975, denying the application for a writ of habeas
corpus, it is

ORDERED and ADJUDGED that the petitioner
take nothing and that the application is denied.

Dated: Brooklyn, New York
April 26, 1975

Lewis Orgel
Clerk

SEP 29 3 40 PM '74

DISTRICT COURT OF THE UNITED STATES
EASTERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT
EASTERN DISTRICT
OF NEW YORK

On the Matter of the Application of
DONALD V. HORN,

Petitioner,

PETITION FOR WRIT
OF HABEAS CORPUS

For a Writ of Habeas Corpus to
Determine Custody of ROSEMARY HORN,
a child now held by GENEVIEVE KELLER,

Index No.

Respondent.

74C 1255

TO THE UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF NEW YORK

The petition of DONALD V. HORN by his attorney THOMAS A. CASSIDY,, respectfully shows to this Court that:

1. I am an individual residing at Rockville Centre, New York. Respondent is GENEVIEVE KELLER a citizen and domiciliary of Florida. The Court has jurisdiction based on diversity of citizenship. Respondent is my former wife and mother of the minor child who is the subject of this petition.

2. Peritioner, had he brought this action in a New York Court, would have in personam jurisdiction over respondent through CPLR 302 (a) 1 see Kochenthal v. Kochenthal.
28 A.D. 2d 117 282 N.Y.S. 2d 36

3. On or about April 30, 1974 respondent induced Rosemary to leave New York, travel to Florida and remain there.

4. Pursuant to an order of the Circuit Court of the Seventeenth Judicial Circuit, in and for Broward County, Florida, Lucy H. Moe Circuit Judge, respondent has retained custody of Rosemary.

5. Pursuant to a valid bilateral Mexican divorce decree dated August 14, 1970, custody of all minor children was awarded to petitioner.

①

6. Pursuant to a valid separation agreement entered into by petitioner and respondent in Nassau County, New York, dated August 12, 1970 which survives the Mexican divorce decree, custody of all minor children was awarded to petitioner.

7. WHEREFORE, the Florida Court ignored a contract validly entered into in New York and refused to accord it full faith and credit.

8. Subject child Rosemary has until late resided with her father and sisters in New York.

9. Subject child Rosemary has been enrolled at Sacred Heart Academy High School in Hempstead, New York for the upcoming school year.

10. The best interests of Rosemary would be served by returning her to her legal custodian, i.e., petitioner.

11. The Florida Court acted unconstitutionally by ignoring the New York separation contract and not giving it full faith and credit.

12. Petitioner prays the Court vacate the award of custody granted by the Florida State Court.

13. Petitioner prays the Court assume jurisdiction over all the parties in this action.

14. Petitioner further prays this Court make an absolute award of custody to petitioner in accordance with the annexed separation contract.

Dated: East Meadow, New York
August 30, 1974

TO: Lucy H. Moe, Circuit Judge
Circuit Court of the Seventeenth Judicial Circuit
Broward County, Florida

TO: Genevieve Keller
347 Slocum Way
Yacht Haven
Ft. Lauderdale, Florida 33312

Thomas A. Cassidy
THOMAS A. CASSIDY
Attorney for Petitioner
Office & P. O. Address
222 Newbridge Avenue
East Meadow, N. Y. 11554
(516) 483-2200

15. A prior action between the same parties and based on the same claim was heard before the Circuit Court for the 17th Judicial District in and for Broward County Florida, Lucy H. Moe, Judge, application for a writ of habeas corpus denied the 15th day of May 1974. Case # 74-6000.

6. Pursuant to a valid separation agreement entered into by petitioner and respondent in Nassau County, New York, dated August 12, 1970 which survives the Mexican divorce decree, custody of all minor children was awarded to petitioner.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Civil Action No.

Order to Show Cause

Upon the petition above of Thomas A. Cassidy
for Donald V. Horn, it is

✓ ORDERED that the respondent show cause at
✓ a hearing of this Court, to be held in ^{Court} Room 1,
✓ United States Court House, Cadman Plaza, Brooklyn,
✓ New York, on the 30 day of September, 1974, at 10 o'clock
in the forenoon of that day or as soon thereafter
as counsel can be heard why an order should not
be made herein granting absolute custody of
Rosemary Horn to petitioner and directing respondent
to relinquish custody of said child. Further, petitioner
prays this Court direct the Circuit Court for the
17th Judicial District, in and for Broward County,
Florida, Lucy H. Moe, Judge, to relinquish jurisdic-
tion over the parties and Rosemary Horn, subject
of this order.

IT IS FURTHER ORDERED that service of a
copy of this order and the petition upon which the
same is granted, on the said respondent ~~and on the~~
✓ ~~said Florida Court~~, on or before Sept. 26, 1974 shall
be sufficient service of this order, ~~and in the~~
~~meantime and until the hearing and determina-~~
~~tion of this petition and the entry of an~~
~~order thereon, let all proceedings be stayed for~~
they

Dated: September 20, 1974

Wm J. Judd

★ SEP 20 1974 ★

United States District Judge

TIME A.M.
P.M.

STATEMENT OF EXPENSES

Amount	Date	Check No.	Favor of	Purpose
\$ 26	1/15/75	2330	Holiday Inn	Lodging
500	1/13/75	1618	R. Ray	Legal Fees
300	2/2/75	1610	R. Sammons & Co	" "
300	11/3/74	1552	Karlman, Sonnet & Bader	" "
300	12/14/74	1573	" " "	" "
250	11/22/74	1575	Sacred Heart Academy	Tuition
700	11/20/74	1554	J. Lang Det. Agency	Priv. Investig.
300	5/2/74	1441	" " "	" "
1050	6/2/74	1444	L. Lally	Legal Fees
107 1447	7/3/74	1499	Sunrise Animal Hosp	Board Pets
357.98 +50.00	7/29/74	1503	Rogers, Morris & Ziegler	Legal Fees
570	8/5/74	1506	Sacred Heart Acad	Tuition
10	8/8/74	1508	" " "	Fees
500	8/30/74	1513	Thomas A. Cassidy	Legal Fees
183.20	7/14/74	1517	E. A. L.	Trans.
600.00	9/11/74	1519	Nazco & Lang	Legal Fees
103.05	9/13/74	1520	Hertz Corp	Transportation
768.72	10/19/74	1533	L. Lally	Legal Fees
200.00	11/22/74	1551	J. Lang Det. Agency	Priv. Investig.
80.00	11/22/74	1552	" " "	" "
275.00	9/15/74	1592	Sacred Heart Sem.	Tuition
10.00	3/14/74	2198	Marlon Uniforms	School Uniforms
86.67	3/23/74	2111	" " "	" "
10.00	4/27/74	2228	Sacred Heart Acad	" "
50.00	4/27/74	2229	" " "	Comm. Fee
22.00	5/7/74	2239	Rogers, Morris & Ziegler	Legal Fees
94.00	7/25/74	M.C. (21000000)	E. A. L.	Trans.
127.00	5/20/74	M.C. (24000000)	E. A. L.	"
32.72	5/31/74	M.C.	Holiday Inn	Lodging
20.90	6/1/74	M.C.	Hertz	Trans.
86.00	1/29/75	M.C.	Hertz	Lodging

<u>Amount</u>	<u>Date</u>	<u>Check no</u>	<u>Favor of</u>	<u>Purpose</u>
36.88	6/7/74	M/C 00000002	Hert 2	Transportation
98.37	12/10/74	BAC	ETC.	Trans To FTL
98.37	12/12/74	BAC	ETC.	" " "
127.37	10/22/74	BAC	Fate	" " "
34.11	10/24/74	BAC	Ramada Inn	Lodging FTL
15.40	10/23	BAC	Hert 2	Transportation
94.37	6/28	BAC	Fate	Trans. to FTL
43.29	12/11	BAC	Ramada Inn	Lodging
18.72	4/23	BAC	Travelodge	"
98.37	11/20	BAC	ETC	Trans
134.73	12/17	MC	ETC	"
196.73	12/18	MC	ETC	"
66.96	11/12	MC	AVIS	"
27.21	11/15	MC	AVIS	"
23.74	12/11	BAC	Ramada Inn	Lodging
100.00	12/12	MC	Cash	Priv. Invt
23.70	12/3	BAC	Holiday Inn	Lodging
26.00	7/23	Cash	" "	"
32.70	5/31	BAC	" "	"
78.32	12/3	BAC	NAL	Trans
40.19	12/3	BAC	NAL	"
132.37	12/3	BAC	ETC	"
98.37	12/10	BAC	ETC	"
600.00	Aug-Feb	60/m + 10 mc	N.Y. Tel. Co	Tel.

DUE (OWEN) - NOT PAID
 500 P
 1438 12,576.97
 BB Legal Fees

Sheet 3 of 3

The Total of the foregoing is \$ 12,516.97

The foregoing is not all the expenses, as follows:

- Only one half the airline costs are included
- Not all the lodging in Fort Lauderdale is included
- Not all the Hertz and Avis Car hire is listed.
- Cash outlays are not included

I certify that the foregoing are true expenses in connection with the removal of my daughter Rosemary J. Horn from New York to Florida.

Donald R. Horn

February 24, 1975

PRESENT: HON. MARIO PITTONE
JUDGE
SUPREME COURT - NASAU COUNTY
SPECIAL TERM, PART II

At Special Term Part II of the Supreme Court of
the State of New York, held at the County of
Nassau, at 32 Willis Avenue, Larchmont, N. Y. on
the 7th day of December, 1964

In the Matter of the Application of :

DONALD V. HORN, :

Petitioner, :

For a Writ of Habeas Corpus to
Bring up the Body of ROSEMARY
FRANCES HORN, an Infant, and to
Determine and Award Custody of
said Infant, :

Action No. 1

-against- :

GENEVIEVE E. HORN, :

Respondent, :

In the Matter of the Application of :

Genevieve E. Horn, :

Petitioner, :

For a Writ of Habeas Corpus to
Determine the Custody of KATHERINE
JOHN, DONNA L. HORN and BONNIE
JOHN, Minor Children, Now Held
by :

Action No. 2

DONALD V. HORN, :

Respondent. :

ES A Writ of Habeas Corpus having been issued and allowed
herein on the 14th day of September, 1965, directed to
GENEVIEVE E. HORN to bring up the body of ROSEMARY FRANCES HORN,
an infant of the age of six years in her custody, returnable
before this court on the 26 day of September, 1964 and the said
Writ having been duly served on said GENEVIEVE E. HORN, and
said GENEVIEVE E. HORN having duly obeyed the same and made
return thereto and a Writ of Habeas Corpus having been issued
and allowed herein on the 7th day of September, 1965 directed
to DONALD V. HORN to bring up the bodies of KATHERINE E. HORN,
14 years of age, DONNA L. HORN, 13 years of age and BONNIE J.

I, HAROLD W. McCONVILLE, Clerk of the County of Nassau and of the
Supreme and County Courts, do hereby certify that I have
compared the answers and affidavits of the parties and the
transcript thereof, and of the records of said court, and
the same is a true and correct copy of the same as the same
appear in the records of said court, and I have
affirmed the same in my
office on the 21st day of
APR 24 1975

THOMAS W. McConville, Clerk

10
M.H.

RECEIVED BY
1965 DEC 10 AM 10:01

J. HORN, 12 years of age, in his custody, returnable before this court on the 24 day of September, 1965 and the said Writ having been duly served on DONALD V. HORN and said DONALD V. HORN having duly obeyed the same and made return thereto; AND the court having taken and heard the proofs and allegations of the parties and inquired into the the cause of detention and restraint of said infants by said GENEVIEVE E. HORN and DONALD V. HORN and into the welfare of said infants and having questioned and conversed with the said infants in private, in chambers, and considered this matter fully:

NOW therefore upon all the proceedings and papers herein and upon filing the opinion with of the Court, it is, on Notice of Motion of WILLIAM J. CROUTIER, ESQ., attorney for said petitioner, DONALD V. HORN;

Ordered, that both of the above are sustained to the extent hereinafter indicated.
ORDERED, that dual custody of said infants, ROSEMARY FRANCE HORN, PATHERIE E. HORN, DONNA E. HORN and BONNIE J. HORN be at the same hereby is awarded to both GENEVIEVE E. HORN and DONALD V. HORN *and the same shall be so.*

ORDERED, that if either parent moves out of the marital home voluntarily and refuses to return, the remaining parent shall then get sole custody of said infants *and the reasonable expenses of the parent and the child.*
ORDERED, that at no time may either parent take any one of all of said infants out of the County of Nassau under penalty of contempt of Court *and the same shall be so.*

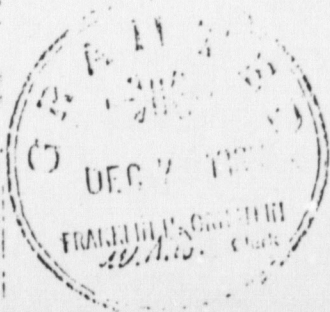
ORDERED, that the five cats be removed from the marital home forever *and the same shall be so.*

ORDERED, further that the infants clothing now in California be returned.

ENTER

Walter P. Allen

J.S.C.



RECEIVED

DEC 7 1965

FRANKLIN H. CRISTEEN
CLERK OF THE COURT

X